

TERRY D. BEMORE  
CDC# E-36301  
San Quentin State Prison  
San Quentin, California 94974

FILED

2008 FEB 15 PM 4:07

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT

BY Rm DEPUTY

SOUTHERN DISTRICT OF CALIFORNIA

TERRY D. BEMORE,

Petitioner,

v.

ROBERT L. AYERS, JR., Warden of  
California State Prison at San Quentin,

Respondent.

Case No.: **'08 CV 0311 LAB LSP**

**DECLARATION IN SUPPORT OF  
RENEWED MOTION FOR APPOINTMENT  
OF COUNSEL IN CALIFORNIA DEATH  
SENTENCE CASE AND FOR STAY OF  
EXECUTION OF DEATH SENTENCE**

*Death Penalty Case*

I, TERRY D. BEMORE, in support of my motion that this Court appoint counsel to represent me in federal habeas corpus proceedings and stay the execution of my death sentence, declare the following under penalty of perjury:

1. I was convicted and sentenced to death on November 2, 1989, in the San Diego County Superior Court, State of California, Criminal Case No. CR 84617. Since then I have been continuously incarcerated on death row at San Quentin Prison, San Quentin, California

2. My conviction and death sentence were affirmed on direct appeal by the California Supreme Court on April 20, 2000. *People v. Terry D. Bemore*, 22 Cal. 4th 809(2000). On September 21, 2000, I filed a petition for writ of certiorari in the United States Supreme Court which was denied on January 8, 2001. *Bemore v. California*, U.S. Supreme Court No. 00-7152.

3. On June 19, 2000, I filed a petition for writ of habeas corpus in the California Supreme Court. The petition was denied on October 17, 2007. The order is attached hereto was

Exhibit 1. However, my attorney did not receive notice of this order until recently, apparently because the California Supreme Court had not recorded his noticed change of address on its docket of my habeas corpus proceedings.

4. I have previously sought federal relief arising out of this matter by filing two habeas corpus petitions in this Court, first on July 22, 1997, in Case No. 98-902-IEG (RBB), and subsequently on January 21, 2000, in Case No. 00-CV-154-MJLNLS, in which I also requested appointment of counsel. These petitions were denied without prejudice on September 16, 1998, and January 28, 2000, respectively, on the ground that state proceedings had not been exhausted and thus any federal petition was premature. Following dismissal of this second petition, a motion for reconsideration was filed on February 3, 2000, and denied on February 7, 2000.

5. I intend to file a renewed petition for writ of habeas corpus in this Court, alleging federal constitutional errors that entitle me to relief from the judgment of conviction and sentence of death. I need the assistance of counsel in preparing and litigating that petition.


6. I am indigent and do not have the assets to retain an attorney to represent me in these habeas corpus proceedings.

7. I therefore renew my request that the Court appoint qualified counsel to represent me in these habeas corpus proceedings.

8. I further request that my renewed request for federal counsel be deemed effective, *nunc pro tunc*, as of October 17, 2007, the date on which the California Supreme Court denied my state habeas petition, in light of the fact that I previously requested counsel on January 21, 2000, but that request was denied as premature. My request became ripe on October 17, 2007, when my state habeas corpus petition was denied, but my state counsel did not receive notice of the denial and thus did not have a basis for formally renewing my previous request for counsel.

I declare under penalty of perjury the foregoing is true and correct.

Executed on this the 4th day of February, 2008, at San Quentin State Prison, Marin  
County, California.

  
TERRY D. BEMORE

SUPREME COURT  
FILED

OCT 17 2007

S089272

Frederick K. Ohlrich Clerk

DEPUTY

## IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re TERRY D. BEMORE on Habeas Corpus

Petitioner's application for leave to file Exhibit 61, filed October 27, 2000, is granted.

The petition for writ of habeas corpus, filed June 19, 2000, is denied.

All claims are denied on the merits.

Except insofar as they assert ineffective assistance of trial counsel, Claims 21, 22, and 23 are barred under *In re Dixon* (1953) 41 Cal.2d 756, 759 because they could have been, but were not, raised on appeal.

Except insofar as they assert ineffective assistance of trial counsel, Claims 17, 19, and 20 are barred under *In re Seaton* (2004) 34 Cal.4th 193, 199-200 because they were not properly preserved in the trial court.

George, C.J., was absent and did not participate.

KENNARD

Acting Chief Justice

Exhibit 1

**DECLARATION OF SERVICE BY MAIL**

I declare that I am over 18 years of age, not a party to the within cause; my business address is Law Offices of Robert R. Bryan, 2088 Union Street, San Francisco, California 94123-4117. Today I have served a copy of the attached

**Renewed Motion for Appointment of Counsel and for Stay of Execution of Death Sentence**

**Declaration of Robert R. Bryan, Attorney, In Support of Renewed Motion for Appointment of Counsel and for Stay of Execution**

**Declaration In Support of Renewed Motion for Appointment of Counsel In California Death Sentence Case and for Stay of Execution of Death Sentence**

**Order Staying Execution of Death Sentence and Referring Matter To the Selection Board for Suggestion of Appointed Counsel [Proposed]**

by placing a copy of same in the United States Mail, postage pre-paid and properly addressed, to:

Terry D. Bemore (Petitioner)  
P.O. Box No. E-36301  
San Quentin State Prison  
San Quentin, CA 94974

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Clerk of the Court  
San Diego County Superior Court  
P.O. Box 122724  
San Diego, CA 92112-2724

Robert L. Ayers, Jr., Warden  
San Quentin State Prison  
San Quentin, CA 94964

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 13th day of February, 2008, at San Francisco, California.

  
ROBERT R. BRYAN